

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Gregg D. Wilensky
 Patent No. : 7,412,105
 Issue Date : August 12, 2008
 Serial No. : 10/678,366
 Filed : October 3, 2003
 Title : TONE SELECTIVE ADJUSTMENT OF IMAGES

Art Unit : 2624
 Examiner : Jeffrey S. Smith
 Conf. No. : 4008

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. §1.183

Assignee hereby petitions the Commissioner under 37 C.F.R. §1.183 for a suspension of 37 C.F.R. §1.705(d) and (e) and for acceptance of the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)," which is filed with this petition, to correct the erroneous patent term adjustment (PTA) calculation. Assignee may lose 272 days in the life of its patent through no fault of its own, seriously prejudicing Assignee in fully enforcing its statutory patent rights if this petition is not granted.

The above titled patent was issued on August 12, 2008. At the time of the issuance, the Office interpreted the law in a way that did not support correcting the PTA calculation. In fact, the applicant made an earnest attempt to follow the rules and law as have been set forth by the Office. On September 30, 2008, the U.S. District Court for the District of Columbia issued an opinion in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), which made clear that the Office's method for calculating the PTA was in error. As a result of this change in the law, which occurred more than one month after the above entitled patent issued, petitioner could not reasonably have timely presented a request for reconsideration of the patent term adjustment.

This case presents the rare instance where the Office's application of the rules has been overturned by the courts. In such exceptional cases, it would be manifestly unjust to punish those who made an earnest attempt to comply with the laws and regulations as interpreted by the PTO.

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the United States Patent and Trademark Office using the EFS -WEB system on this date: December 22, 2008

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Attorney's Docket No.: 07844-0617001 / P574

Please apply the \$400.00 fee required under 37 C.F.R. § 1.17(f) and any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date:December 22, 2008

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